IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	Criminal No. 1:07CR209
v.	)	
	)	Hon. T.S. Ellis, III
WILLIAM J. JEFFERSON,	)	
	)	Motions Hearing: October 12, 2007
Defendant.	)	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS 2, 3, 10 AND 12-14 FOR LACK OF VENUE AND TO TRANSFER VENUE

The United States of America, by its attorneys, Chuck Rosenberg, United States Attorney for the Eastern District of Virginia, and Mark D. Lytle and Rebeca H. Bellows, Assistant United States Attorneys, and Charles E. Duross, Special Assistant United States Attorney, respectfully submits this Opposition to Defendant's Motion to Dismiss Counts 2, 3, 10, 12-14 for Lack of Venue and to Transfer Venue for the Remaining Counts. The defendant's motion is without merit and should be denied. Venue is proper in the Eastern District of Virginia for all the counts of the Indictment and the prosecution of the defendant in this District comports with the Equal Protection Clause of the Constitution.

Background

On June 4, 2007, a duly empaneled federal grand jury sitting in the Eastern District of Virginia returned a sixteen-count criminal indictment against the defendant, William J. Jefferson, a Member of the United States House of Representatives ("House"). The Indictment charges the defendant with one count of conspiracy to solicit bribes by a public official, deprive citizens of honest services by wire fraud, and violate the Foreign Corrupt Practices Act (18 U.S.C. § 371); one count of conspiracy to solicit bribes by a public official and deprive citizens of honest services by

wire fraud (18 U.S.C. § 371); two counts of solicitation of bribes by a public official (18 U.S.C. § 201); five counts of a scheme to deprive citizens of honest services by wire fraud (18 U.S.C. §§ 1343 and 1346); one count of violating the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-2(a)); three counts of Money Laundering (18 U.S.C. § 1957); one count of Obstruction of Justice (18 U.S.C. § 1512(c)(1)); one count of violating the Racketeer Influenced Corrupt Organization Act (18 U.S.C. § 1962(c)); and Forfeiture Allegations (18 U.S.C. §§ 981, 982, and 1963; 28 U.S.C. § 2461).

With respect to the charges set forth in the Indictment, the government first learned that Defendant Jefferson might be involved in a bribery scheme and a scheme to defraud United States citizens and the United States House of Representatives of his honest services when, in approximately March of 2005, a businessperson who resided and worked in Northern Virginia reported to the Federal Bureau of Investigation what the businessperson suspected was a fraud. The Northern Virginia businessperson met with FBI Special Agents assigned to the Northern Virginia Resident Agency at their offices in Tysons Corner, Virginia, within the Eastern District of Virginia. There, the Northern Virginia businessperson reported that Brett Pfeffer, a former staffer to Congressman William J. Jefferson, had introduced the businessperson to Jefferson and an individual named Vernon Jackson for the purpose of exploring potential investment in a telecommunications venture in Nigeria that would use services and equipment provided by Jackson's company, iGate, Inc. The Northern Virginia businessperson further reported that, after agreeing to pay iGate approximately $45 million for the exclusive right to use iGate's technology and equipment for the Nigerian telecommunications venture, Jefferson solicited an ownership interest (five to seven percent to be placed in the names of Congressman Jefferson's children) in the businessperson's

Nigerian company, W2-International Broadband Services ("W2-IBBS"), in exchange for the performance of official acts to promote the Nigerian business venture.

After interviewing the Northern Virginia businessperson and corroborating some of the information the businessperson had provided, the FBI's Northern Virginia Resident Agency opened an investigation and contacted the Alexandria, Virginia office of the United States Attorney for the Eastern District of Virginia for assistance with the investigation. The Northern Virginia businessperson agreed to be a cooperating witness ("CW") and to consensually record conversations with Jefferson and others at the direction of the FBI. This Northern Virginia businessperson is referred to as CW throughout the Indictment. Indictment ¶ 12 (hereinafter "Ind. __").

Together, special agents with the Northern Virginia Resident Agency and Assistant United States Attorneys from the Eastern District of Virginia conducted an investigation that utilized numerous investigative tools and the subpoena power of federal grand juries in the Eastern District of Virginia. The investigation, which was both pro-active and historical, uncovered numerous solicitations by Congressman Jefferson for bribe payments in return for a stream of official acts. The bribery and fraudulent schemes devised and conducted by Congressman Jefferson spanned several years and a number of geographic regions, including the Eastern District of Virginia. The investigation culminated in the sixteen-count Indictment returned by a federal grand jury in the Eastern District of Virginia.

As will be demonstrated below, venue for all counts of the Indictment are proper in the Eastern District of Virginia. In addition, the defendant's claim that prosecution in the Eastern District of Virginia violates his rights under the Equal Protection Clause are baseless. The defendant

engaged in criminal conduct in the Eastern District of Virginia before and during the government's investigation. He is properly being tried in this District.

Argument

I. Venue is Proper in the Eastern District of Virginia for all Counts Alleged in the Indictment

A. Summary of the Governing Legal Principles

Pursuant to the Federal Rules of Criminal Procedure, venue in federal criminal prosecutions lies in the district in which the alleged crime was committed. *See* Rule 18, Fed. R. Crim. This rule derives from the constitutional venue provisions guaranteeing a criminal defendant the right to be tried in the district in which the crime was allegedly committed and by jurors of that district. *See United States v. Wilson*, 262 F.3d 305, 320 (4th Cir. 2001) (citing U.S. Const. Art. III, § 2, cl. 3).

Some offenses are committed entirely within a single district, and must be tried within that district. Other offenses may begin in one district and finish in another. For those "continuing offenses," 18 U.S.C. § 3237(a) confers venue as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued or completed.

Therefore, for continuing offenses that do not contain an express venue provision in the criminal statute, Section 3237 confers venue for such offenses in any district in which the offense was begun, continued, or completed.

In determining where the crime was committed for venue purposes, the court must determine "the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Anderson*, 328 U.S. 699, 703 (1946). "In performing this inquiry, a court must initially identify the

conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts." *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999). Accordingly, courts should determine where the acts that comprise the statute's "essential conduct elements" occurred. *Id.* at 280. *See also United States v. Bowens*, 224 F.3d 302, 309-14 (4th Cir. 2000) (holding that venue is proper wherever the "essential conduct elements have occurred"). Moreover, "[t]he inquiry into the place of the crime may yield more than one appropriate venue, *see* 18 U.S.C. § 3237(a), or even a venue in which the defendant has never set foot." *Bowens*, 224 F.3d at 309.[1]

The government bears the burden of proving by a preponderance of the evidence that venue is proper. *Bowens*, 224 F.3d at 308. When there is more than one count charged in the indictment, the government must prove venue with respect to each count. *Id.* This opposition memorandum, however, only addresses venue for Counts 2, 3, 10, and 12-14 because the defendant appears to concede that venue is proper in the Eastern District of Virginia for all remaining counts.

B. Venue for Count 2 is Proper in the Eastern District of Virginia

Venue in the Eastern District of Virginia for Count 2 of the Indictment, which charges conspiracy to commit bribery and honest services wire fraud, is plainly proper. Conspiracy is a continuing offense and, as such, can be prosecuted in any district in which the offense was begun,

[1] Before the Supreme Court's ruling in *Rodriguez-Moreno*, courts routinely employed the "verb test," which involved examining the verbs defining the offense to identify where an offense was committed. *See, e.g., United States v. Kibler*, 667 F.2d 452, 454 (4th Cir. 1982). The Supreme Court in *Rodriguez-Moreno* declined to adopt the verb test as the tool for determining the conduct that constitutes an offense, finding that it "unduly limits the inquiry into the nature of the offense and thereby creates a danger that certain conduct prohibited by statute will be missed." *Rodriguez-Moreno*, 526 U.S. at 280.

continued or completed. *See United States v. Carter*, 300 F.3d 415, 427 (4th Cir. 2002); *United States v. Gilliam*, 975 F.2d 1050, 1057 (4th Cir. 1992). Where, as here, the conspiracy to commit bribery and honest services fraud spanned numerous geographic regions, venue can be proper in multiple locations. *See Bowens*, 224 F.3d at 310.

"Venue on a conspiracy charge may be laid 'in any district in which a conspirator performs an overt act in furtherance of the conspiracy or performs acts that effectuate the object of the conspiracy.'" *Smallwood*, 293 F. Supp. 2d at 637 (quoting *Hyde v. United States*, 225 U.S. 347, 356-367 (1912)). The overt acts necessary to support venue in a conspiracy case need not be substantial. *See United States v. Mitchell*, 70 Fed. Appx. 707, 711 (4th Cir. 2003); *Smallwood*, 293 F. Supp. 2d at 638.

The Indictment alleges overt acts in furtherance of the Count 2 conspiracy that occurred in the Eastern District of Virginia. Businessperson G, who was a co-conspirator, caused an application to be filed with the United States Trade and Development Agency ("USTDA") in Arlington, Virginia, in furtherance of the conspiracy. Ind. ¶ 182. Since venue is proper in a district into which a defendant "caused communications to be transmitted," *see United States v. Ebersole*, 411 F.3d at 527 (quoting *United States v. Stewart*, 256 F.3d 231, 243 (4th Cir. 2001)), venue on a conspiracy charge is equally proper in a district into which a co-conspirator caused a communication to be transmitted. *See United States v. Al-Talib*, 55 F.3d 923, 928-29 (4th Cir. 1995) (the acts of one member of a conspiracy can be attributed to all other conspirators for venue purposes). The Indictment also alleges that in furtherance of the conspiracy, Jefferson caused one of his staffers to inquire of the USTDA in Arlington, Virginia, about the status of the pending application. Ind. ¶ 183. Several months later, again in furtherance of the conspiracy, Jefferson caused a congressional staff

member to send *via* facsimile to the USTDA in Arlington, Virginia, a letter from a high-ranking Nigerian government official pledging support for the proposed development of a fertilizer plant in a Nigerian state. Ind. ¶ 185. In causing others to have contact with the Eastern District of Virginia to further the objects of the conspiracy, Jefferson "reach[ed] into this district" and "established [a] basis for venue here." *United States v. Donato*, 866 F. Supp. 288, 291 (W.D.Va. 1994). Whether the staffer's inquiry was in person, by telephone, or e-mail is immaterial, because the defendant caused the contact (whether wire communication or in person) to take place in the Eastern District of Virginia. *United States v. Ebersole*, 411 F.3d at 527; *United States v. Donato*, 866 F. Supp. at 291 ("It is well established that 'phone calls from one district into another can establish venue in the latter district so long as they further the ends of the conspiracy.'")

In claiming that Count 2 lacks sufficient overt acts in the Eastern District of Virginia, the defendant completely ignores paragraphs 203 through 205 of the Indictment, which allege that the defendant, Lobbyist A, and others traveled from Washington Dulles International Airport in Loudoun County, Virginia, to several African nations to promote various business opportunities, including Company C's waste recycling system. Ind. ¶¶ 203-205. As is alleged in the Indictment, Jefferson had previously solicited from Lobbyist A an interest in Company C in return for his official assistance. Ind. ¶¶ 194, 195. Jefferson's solicitation resulted in an executed agreement between Company C, Lobbyist A, and Providence International Petroleum Company ("PIPCO") (a Jefferson-controlled company), under which PIPCO would receive both a commission from Company C for the sale of any waste recycling system and a share of the revenue from its operation. Ind. ¶ 196. As a result, Jefferson's boarding of a plane in the Eastern District of Virginia on February 15, 2004, for the purpose of traveling to several African nations to promote Company C's

waste recycling system to government officials in those nations, was an overt act taken in furtherance of the conspiracy.

Because Count 2 alleges overt acts in furtherance of the conspiracy that occurred in the Eastern District of Virginia, defendant's motion to dismiss this count for lack of venue should be denied.

C. Venue for Count 3 is Proper in the Eastern District of Virginia

Count 3 of the Indictment charges that from January 2001 through August 2005, within the Eastern District of Virginia and elsewhere, Jefferson sought, received, and agreed to receive things of value from Vernon Jackson and iGate in return for being influenced in the performance of official acts, in violation of 18 U.S.C. § 201(b)(2)(A). Reduced to its essence, Count 3 charges Jefferson with soliciting and accepting bribes from Vernon Jackson and his company, iGate, in exchange for official acts that Jefferson agreed to perform and did perform to promote iGate's business ventures in Nigeria, Ghana, and elsewhere. Because Jefferson's course of conduct in soliciting and accepting bribes from Jackson and iGate occurred in several jurisdictions, including the Eastern District of Virginia, venue is proper in this District.

In *United States v. Quinn*, 359 F.3d 666, 673 (4th Cir. 2004), the Fourth Circuit held that the "*quid pro quo*" requirement in a bribery case can be satisfied by a "course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor" and that "these standards apply with equal force in the solicitation context." Thus, the *Quinn* court recognized that some bribery cases involve a public official engaging in a course of conduct of soliciting, demanding, receiving and agreeing to receive things of value in return for a pattern of official acts. *Id.*

In bribery cases involving government officials who have undertaken a course of conduct of soliciting, accepting, or agreeing to accept things of value, courts have consistently applied Section 3237(a) to find venue proper wherever the official has solicited, accepted, or agreed to accept things of value. *See United States v. North*, 910 F.2d 843, 911-12 (D.C. Cir. 1990), *opinion withdrawn and superseded in part on other grounds, United States v. North*, 920 F.2d 940 (1990); *United States v. Stephenson*, 895 F.2d 867, 874 (2d Cir. 1990); *United States v. Niederberger*, 580 F.2d 63, 69-70 (3d Cir. 1978); *United States v. Goodloe*, 188 F.2d 621, 622 (D.C. Cir. 1950). In *North*, the defendant, Oliver North, was charged with bribery pursuant to Section 201(c)(1)(B) stemming from his acceptance of a home security system allegedly provided for or because of an official act. 910 F.2d at 911. Although North had several meetings in Virginia about the security system and the system was ultimately installed in Virginia, North also indicated his approval of the installation of the security system during a meeting in Washington, D.C. 910 F.2d at 911-12. After his conviction, North argued that venue was proper only in Virginia, where the security system had been installed. The Court of Appeals for the D.C. Circuit disagreed, concluding that although venue in Virginia would have been proper, venue was also proper in the District of Columbia. *Id.* The D.C. Circuit held that venue was proper in any district where the acceptance of the bribe "was commenced, continued or completed . . . even though most of the acts relied upon to constitute the crime were committed [elsewhere]." *North*, 910 F.2d at 912 (quoting *Goodloe*, 188 F.2d at 622).

The evidence at trial will establish what the grand jury had probable cause to allege in Count 3, namely, that Jefferson demanded, sought, accepted, and agreed to receive things of value from Vernon Jackson and iGate (in return for official acts) in several locations, including the Eastern District of Virginia. The evidence will prove that Jefferson made his initial bribe demands of

Jackson outside this district, but that he continued to solicit and accept bribes from Jackson and iGate in this district. Consequently, under the venue provision of Section 3237(a), venue is proper in the Eastern District of Virginia.

For purposes of establishing venue in this district, Count 3 does not need to specify the times or places Jefferson sought or accepted bribes in the Eastern District of Virginia from Jackson or iGate in exchange for the performance of official acts. The cases cited by the defendant do not require otherwise. In *United States v. Douglas*, 996 F.2d at 969, 972 (N.D. Cal. 1998), venue was found lacking *after trial*. The Court found that the prosecution had not elicited any evidence at trial establishing that the defendant gave, offered, or promised anything of value to a public official in the district where the defendant was charged. Clearly, that case does not advance the defendant's position that the Indictment, on its face, fails to establish venue for Count 3.

The defendant's reliance on *United States v. Hurwitz*, 573 F.Supp. 547 (S.D.W.Va. 1983), is equally misplaced. The district court in that case did not, as the defendant suggests, "pierce the boilerplate language" of the Indictment. On the contrary, the district court determined that it lacked venue upon considering the government's response to the defendant's venue motion, wherein the government *conceded* that venue for the substantive offense was not predicated upon any acts performed by the defendants themselves. *Hurwitz*, 573 F. Supp. 550-51. That, of course, is not the case here. As stated above, the government is prepared to prove at trial that Jefferson solicited and accepted things of value from Vernon Jackson and iGate in the Eastern District of Virginia.

It is enough at this stage of the proceedings that a grand jury has found that probable cause exists to believe that the defendant "within the Eastern District of Virginia and elsewhere . . .did, directly and indirectly, knowingly and corruptly demand, seek, receive, accept and agree to receive

and accept anything of value personally and for any other person and entity, in return for being influenced in the performance of any official acts." *See* ¶ 207. Where an indictment tracks the statutory language and specifies the nature of the criminal activity, it is sufficiently specific to withstand a motion to dismiss. *See United States v. Critzer*, 951 F.2d 306, 307 (11th Cir. 1992); *United States v. Carr*, 582 F.2d 242, 244 (2d Cir. 1978).

Therefore, where, as here, the solicitation of, acceptance of, or agreement to accept things of value in exchange for official acts takes place at different times and over geographic areas, venue is proper in any location where such solicitation, acceptance, or agreement was made. *See, e.g.*, *United States v. North*, 910 F.2d 911-12; *United States v. Stephenson*, 895 F.2d at 874; *Niederberger*, 580 F.2d at 69-70; *United States v. Goodloe*, 188 F.2d at 622. Because Count 3 alleges that Jefferson solicited, accepted, and agreed to accept things of value in the Eastern District of Virginia, venue is proper in this District.

D. Venue is Proper in the Eastern District of Virginia for the Honest Services Wire Fraud Charged in Count 10

"Honest services" wire fraud involves transmitting or causing the transmission of a wire communication in interstate or foreign commerce for the purpose of executing a scheme or artifice to defraud "another of the intangible right of honest services." 18 U.S.C. §§ 1343, 1346. Courts have consistently applied the provisions of the first paragraph of § 3237(a) to wire fraud cases as the wire fraud statute does not contain a specific venue provision. *See, e.g., United States v. Ebersole*, 411 F.3d 517, 527 (4th Cir. 2005)*; United States v. Goldberg*, 830 F.2d 459, 465 (3d Cir. 1987) (Section 1343 is a continuing offense under 18 U.S.C. § 3237(a) "so that venue is proper in any district in which the offenses were begun, continued, or completed.")

Where, as here, there is no express statutory venue provision, the court must determine proper venue "from the nature of the crime alleged and the location of the act or acts constituting it." *Anderson*, 328 U.S. at 703; *Bowens*, 224 F.3d at 308. The Supreme Court has directed that such determination requires examination of the statute defining the offense to identify the essential conduct elements of the offense and where they took place. *Rodriguez-Moreno*, 526 U.S. at 280.

In *Rodriguez-Moreno*, the defendant was convicted in the District of New Jersey for conspiracy to kidnap, kidnaping, and using and carrying a firearm in relation to the kidnaping. 526 U.S. at 277. Although the kidnaping spanned various states -- Texas, New Jersey, New York, and Maryland -- the firearm was only used and carried in Maryland. *Id.* The Third Circuit reversed the defendant's Section 924(c)(1) conviction for lack of venue in the District of New Jersey, concluding that the violation of that statute was committed in Maryland, the only district where the defendant used or carried the firearm. *Id.* at 278.

The Supreme Court reversed the Third Circuit's ruling and found that venue for the firearms offense was in fact proper in the District of New Jersey. *Rodriguez-Moreno*, 526 U.S. at 278. The Supreme Court reasoned that the crime prohibiting the use of a firearm "during and in relation to any crime of violence" made the ongoing crime of violence an essential conduct element of the offense along with the second conduct element of using a weapon. *Id.* at 280-82. The Court explained:

> That the crime of violence element of the statute is embedded in a prepositional phrase and not expressed in verbs does not dissuade us from concluding that a defendant's violent acts are essential conduct elements. To prove the charged § 924(c)(1) violation in this case, the Government was required to show that respondent used a firearm, that he committed all the acts necessary to be subject to punishment for kidnaping (a crime of violence) in a court of the United States, and that he used the gun "during and in relation to" the kidnaping of

> [the victim]. In sum, we interpret § 924(c)(1) to contain two distinct conduct elements – as is relevant to this case, the "using and carrying" of a gun and the commission of a kidnaping.

Id. at 280. Because the kidnaping was an essential conduct element of the weapons charge and it occurred in New Jersey (as well as other locations), venue for the weapons charge was proper in New Jersey even though the weapon was never used or carried there. *Id.* at 280-82.

The Fourth Circuit applied the *Rodriguez-Moreno* "essential conduct element" analysis in *United States v. Bowens*, 224 F.3d at 302, 309. There, the defendant was charged in the Eastern District of Virginia with harboring a fugitive from arrest, although the acts of harboring and concealing took place outside this district. The government argued that venue was appropriate in the Eastern District of Virginia because an essential element of the offense, namely, that a federal warrant be issued for the fugitive, occurred in that district. The Fourth Circuit rejected this argument, explaining that venue does not lie in every district where an essential element occurred, but rather, where an essential *conduct* element took place. *Id.* at 309. The Court explained that only "conduct the defendant himself engages in" that is an essential element of the crime charged can provide a basis for venue. *Id.* at 310.

Although the Fourth Circuit has not analyzed *Rodriguez-Moreno* in the wire fraud context, the Seventh Circuit has applied *Rodriguez-Moreno* in upholding venue for wire fraud violations where the wire fraud did not originate in, pass through, or terminate in the location where charges were filed. In *United States v. Pearson,* 340 F.3d 459, 466 (7th Cir. 2003), the defendants challenged venue for the substantive wire fraud count in the Southern District of Illinois because the basis for that count, a wire transfer from a bank in the Eastern District of Pennsylvania to a bank in the Northern District of Illinois, did not originate in, pass through, or terminate in the Southern District

of Illinois. The court of appeals rejected that argument, finding that the defendant's "fraudulent activities conducted in the Southern District of Illinois provided critical evidence of the 'intent to defraud,' an element of the crime of wire fraud." *Pearson*, 340 F.3d at 466. The court of appeals, citing *Rodriguez-Moreno* for the proposition that the courts must inquire into the nature of the offense, found that the defendant's "crime of wire fraud focused on defrauding and concealing their deceit of consumers, including those in the Southern District of Illinois." *Id.* at 466-67. Consequently, it held that venue was proper in the Southern District of Illinois. *Id. But see United States v. Ramirez*, 420 F.2d 134, 144-45 (2d Cir. 2005) (holding that in mail fraud context, venue only proper where mail was sent, passed or received because devising a scheme is an intent element, not a conduct element); *United States v. Pace*, 314 F.3d 344, 349-50 (9th Cir. 2002) (holding that venue for wire fraud offenses only proper where wires were used or caused to be used in furtherance of fraud scheme).[2]

[2] The government disagrees with the *Ramirez* and *Pace* decisions and believes they are contrary to the Supreme Court's directive in *Rodriguez-Moreno*. In *Ramirez*, the Second Circuit focused exclusively on the intent aspect of a scheme to defraud, failing to recognize that fraud schemes often involve *conduct* in furtherance of the scheme separate from the offending mailing or wire transmission. 420 F.3d at 144. In *Pace*, although the Ninth Circuit cited *Rodriguez-Moreno*, it essentially applied the verb test rejected by Supreme Court in that case. In rejecting the government's argument that the wire fraud was properly charged in the District of Arizona because the defendant concocted his scheme to defraud in that district, the Ninth Circuit stated "Although a fraudulent scheme may be an element of the crime of wire fraud, it is using wires and causing wires to be used in furtherance of the fraudulent scheme that constitutes the prohibited conduct." *Pace*, 314 F.3d at 349. The Ninth Circuit interpreted *Rodriguez-Moreno* too narrowly. Had the Supreme Court in *Rodriguez-Moreno* required the essential conduct element to be "the prohibited conduct" described in the offense statute, it would not have found venue proper in the District of New Jersey for the 924(c) offense. By its very terms, Section 924(c) does not prohibit a crime of violence, but rather, the using and carrying of a firearm during and in relation to a crime of violence.

Under the principles enunciated in *Rodriguez-Moreno* and clarified in *Bowens*, venue in this District on Count 10 is proper. Sections 1343 and 1346 prohibit the use of interstate and foreign wire communications to carry out a scheme to fraudulently deprive another of the intangible right to honest services. To be found guilty of this offense, the government must prove the following essential elements:

1. That the defendant knowingly devised or participated in a scheme to fraudulently deprive another of the intangible right of honest services;

2. That the defendant did so willfully and with an intent to defraud; and

3. That the defendant transmitted or caused to be transmitted by wire in interstate or foreign commerce some communication for the purpose of executing the scheme to defraud.

O'Malley, Grenig, & Lee, *Federal Jury Practice and Instructions Criminal*, § 47.07 (5th ed. 2000). *See also United States v. ReBrook*, 58 F.3d 961, 966 (4th Cir. 1995). Clearly, the defendant's planning of or participation in a scheme or artifice to defraud is an essential conduct element of an honest services wire fraud violation. Therefore, venue is proper in any location where this essential conduct element occurred. *See Rodriguez-Moreno*, 526 U.S. at 280-82; *Smallwood*, 293 F. Supp. 2d at 639. Here, Counts Five through Ten allege that Jefferson devised a scheme to defraud others of his honest services by soliciting and accepting bribes from Vernon Jackson, CW, and their respective companies. Ind. ¶¶ 211, 212. These counts further allege that Jefferson devised such scheme in the Eastern District of Virginia and elsewhere, and even provide specific instances of his participation in the scheme in this District. *Id*. Moreover, the Indictment is replete with overt acts in the Eastern District of Virginia demonstrating Jefferson's participation in the scheme to defraud others of his honest services through deceit and the solicitation of bribes from Jackson, CW, and

their companies. Ind. ¶¶ 73, 77, 93, 97, 98, 110, 113, 117, 123, 130, 131, 136, and 137.[3] Accordingly, there is venue in this District for the honest services wire fraud violation charged in Count 10 notwithstanding the fact that the wire transmission did not touch this District.[4]

E. Venue is Properly Laid in the Eastern District of Virginia for Money Laundering Counts 12 through 14

Defendant Jefferson asks this Court to dismiss Counts 12 through 14 based on the Supreme Court's ruling in *United States v. Cabrales*, 524 U.S. 1 (1998), and the Fourth Circuit's decision in *United States v. Stewart*, 256 F.3d 231, 239-40 (2001). Those two cases are not only inapposite, but the defendant fails to address 18 U.S.C. § 1956(i), which was enacted after those rulings and renders venue of Counts 12 through 14 proper in the Eastern District of Virginia.

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[3] Although these paragraphs correspond to overt acts alleged in Count One of the Indictment, they also relate to the honest services wire fraud scheme charged in Counts 5 through 10. The government was not required to reallege in Counts 5 through 10 the overt acts set forth in support of Count One because overt acts are not required to be charged in substantive counts.

[4] The defendant's reliance on the Fourth Circuit's decisions in *Ebersole* and *Donato* is misplaced. The defendant cites *Ebersole* and *Donato* as support for the contention that venue is only appropriate in a district where the wire was sent or received. *See* Def. Mem. at 11. While *Ebersole* did find that venue would be proper pursuant to § 3237(a) in any district where a payment-related wire communication was transmitted in furtherance of the scheme, it did not hold that venue would *only* be proper where the wire originated, passed through, or terminated. 411 F.3d at 527. Indeed, the *Ebersole* court was not presented with and did not decide the issue here, namely, whether venue would be appropriate in places where other essential offense conduct occurred. With respect to *Donato*, that case predated *Rodriguez-Moreno* and *Bowens*, and applied the verb test that was specifically rejected by the Supreme Court in *Rodriguez-Moreno*. *Compare Donato*, 866 F.Supp. 288, 292 (W.D. Va. 1994) ("[t]he court must look to the language of the statute defining the crime, for the 'essential verb [that] usually contains the key to the solution of the question: In what district was the crime committed?'") with *Rodriguez-Moreno*, 526 U.S. at 280 ("While the 'verb test' certainly has value as an interpretative tool, it cannot be applied rigidly, to the exclusion of other relevant statutory language. The test unduly limits the inquiry into the nature of the offense and thereby creates a danger that certain conduct prohibited by statute will be missed") .

In *Cabrales*, the Supreme Court held that a defendant who conducted financial transactions in Florida and had no role in transporting the proceeds of specified unlawful activity from Missouri to Florida could not be prosecuted in Missouri even though the specified unlawful activity was committed by another in Missouri. 524 U.S. at 5-10. Similarly, in *Stewart*, the Fourth Circuit held that the defendant who only received money transfers in California and who was not responsible for or charged with the transportation of the money from Virginia to California could not be prosecuted for money laundering in Virginia where the transfer originated. 256 F.3d at 239-40. Those holdings have no application to this case, however. Here, Jefferson was not only involved in committing the specified unlawful activity (bribery) in the Eastern District of Virginia, but he also participated in the transferring of the funds from Virginia to Louisiana. Consequently, neither *Cabrales* nor *Stewart* mandate dismissal of Counts 12 through 14.

Venue for these money laundering counts is proper in the Eastern District of Virginia as Section 1956 (i) of Title 18, United States Code, specifically confers venue of those counts in this District. The money laundering statute was amended to adopt this subsection in 2001. *See* Section 1956(i)(2) (2000 ed., Supp. II). Section 1956(i) provides in pertinent part as follows:

> Venue. (1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in –
>
> (A) any district in which the financial or monetary transaction is conducted; or
>
> (B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

Paragraph (3) of Section 1956(i) further provides that the transfer of funds from one place to another, by wire or any other means, shall constitute a single, continuing transaction, that "[a]ny person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place." 1956(c)(2) defines "conducts" to include "initiating, concluding, or participating in initiating, or concluding a transaction."

Pursuant to the venue provision codified in Section 1956(i), venue is proper in the Eastern District of Virginia for Counts 12 through 14 because those counts properly allege that Jefferson participated in the transfer of the proceeds of the specified unlawful activity (bribery) from the Eastern District of Virginia to the Eastern District of Louisiana, where the defendant did engage and cause another to engage in monetary transactions in criminally derived property. As Defendant Jefferson well knows, the money that was laundered in the Eastern District of Louisiana as alleged in Counts 12 through 14 was money that Defendant Jefferson caused CW to transmit *via* wire from the Eastern District of Virginia to a bank account held by the ANJ Group, LLC in New Orleans, Louisiana, in furtherance of his bribe scheme. *See* Indictment at ¶s 110, 111, 116. Because the underlying specified unlawful activity is properly in this District (defendant has not challenged venue for Count One or Count Four of the Indictment) and the grand jury found probable cause to believe that Jefferson "knowingly participated in the transfer of the proceeds of the specified unlawful activity . . . from the Eastern District of Virginia to the Eastern District of Louisiana," venue for counts 12 through 14 is properly in the Eastern District of Virginia.

II. Venue is Proper in the Eastern District of Virginia and the Defendant's Grounds for Transferring to the District of Columbia Are Without Merit

Jefferson and his team of lawyers make the outrageous claim that the government brought charges in the Eastern District of Virginia for racially motivated reasons. Without even a scintilla of evidence to make this preposterous claim and with full knowledge of the history of the investigation and the numerous acts Jefferson performed in the Eastern District of Virginia in furtherance of his fraudulent schemes and solicitation of bribes, the defendant asserts that he has established a "*prima facie* case" of discriminatory purpose and that any "racially neutral reason proffered by the government" would be mere "pretext." The defendant's motion to transfer venue to the District of Columbia is devoid of any merit and should be summarily denied.

A. The Defendant's Equal Protection Rights Have Not Been Implicated by the Government's Choice of Venue as that Prosecutorial Decision Was Not Racially Motivated and the Defendant Has Not Provided Clear Evidence Demonstrating Otherwise

Defendant Jefferson asserts that the framework the Supreme Court prescribed in *Batson v. Kentucky*, 476 U.S. 79, 96-98 (1986), for determining whether peremptory challenges in the petit jury selection process were racially motivated should be applied to determine whether the government's decision-making process regarding venue was racially motivated. Although the defendant couches his motion to transfer as being predicated on the equal protection rights recognized in *Batson*, reduced to its essence, his motion for transfer is based on scurrilous and conclusory allegations of improper discriminatory motives by the prosecutors. Neither *Batson* nor any other case cited by the defendant requires transfer of this case to the District of Columbia.

Courts have consistently refused to interpret *Batson* as requiring them to ensure that a defendant have members of a particular race on his jury. *See Mallett v. Bowersox*, 160 F.3d 456,

460 (8th Cir. 1998) ("[w]e are unable to find any authority to support a conclusion that [the defendant's] Fourteenth Amendment rights were violated by a change of venue to a county without any, or at least a very small number of, black residents from which to draw a jury venire); *Epps v. Iowa*, 901 F.2d 1481, 1483 (8th Cir. 1990) (noting the lack of "any authority to support a conclusion" that a "change of venue to a county with such a small black population that there was virtually no chance that any black persons would be included on the venire" violated the defendant's right to equal protection); *Wallace v. Price*, No. 99-231, 2002 WL 31180963, at *54 (W.D. Pa. Oct. 1, 2002) (observing that the *Batson* Court "never once suggested that its holding applied in cases where the trial court changed venire from one county to another"); *Goins v. Angelone*, 52 F. Supp. 2d 638, 666 (E.D. Va. 1999) ("courts have held that a change of venue to a locality with a venire that includes few or no minorities does not violate a black defendant's constitutional rights"). None of these cases presumed, as the defendant does here, a *prima facie* case of improper racial motives based on the selection of a venue that happened to have fewer citizens of the defendant's race than did another venue. Even the Court in *United States v. Claiborne*, 92 F. Supp. 2d 503, 511 (E.D. Va. 2000), cited by the defense in support of its motion, recognized that "a defendant has no right to a jury of any particular racial composition as long as that jury is fairly selected from the jurisdiction it serves."

While the equal protection clause does not guarantee a defendant a jury with members of a particular race, it does prohibit prosecutorial decisions based on race. *See Wayte v. United States*, 470 U.S. 598, 608 (1985). Where, as here, the defendant contends that the prosecutors exercised their broad discretion in a racially discriminatory manner, the defendant must overcome the presumption of regularity with "clear evidence to the contrary." *United States v. Armstrong*, 517

U.S. 456, 465 (1996). In this case, there is absolutely no evidence -- let alone "clear evidence" -- demonstrating that the prosecution's decision to bring charges in the Eastern District of Virginia was motivated by a racially discriminatory purpose.

To establish a selective prosecution claim (or, in this case, selective venue) based upon race, a defendant must establish both that (1) similarly situated individuals of a different race were not prosecuted (or, in this case, were not prosecuted in this District); and (2) the differing treatment was motivated by discriminatory animus. *See United States v. Olvis*, 97 F.3d 739 (4th Cir. 1996). Here, the court need not even address the first prong of this analysis as Defendant Jefferson has not made any showing, let alone a *clear* showing, that the government's decision to prosecute him in the Eastern District of Virginia was racially motivated. *See United States v. Jones*, 36 F.Supp. 2d 304, 311 (E.D. Va. 1999) ("[a] successful case of selective prosecution cannot be made absent a clear showing of racial animus and the defendant has not made a clear showing on that facet of his claim.")

Because Jefferson proffers absolutely no evidence indicating that the government's selection of venue in this case was racially motivated, he resorts to a statistical comparison of the racial composition of the respective populations of the Eastern District of Virginia and the District of Columbia and to the fact that, during the investigation, the FBI case agents directed CW to conduct meetings with Jefferson in the Eastern District of Virginia. In leaping to the untenable "inference of discriminatory purpose," Def. Mem. at 16, the defendant deliberately ignores significant facts that demonstrate the appropriateness of bringing the criminal charges against the defendant in the Eastern District of Virginia.

First, the investigation was opened by FBI special agents with the Northern Virginia Resident Agency after they interviewed a Northern Virginia businessperson who reported Congressman Jefferson's solicitation of bribes. That interview took place at the FBI's office in Tysons Corner, Virginia. Second, shortly after that interview, the United States Attorney's Office for the Eastern District of Virginia became the lead prosecuting office involved in the investigation.

Third, and most significant, Jefferson performed numerous overt acts in furtherance of the crimes charged in the Indictment in the Eastern District of Virginia. Although the defendant would have this Court believe that he was lured into this District to perform all those acts, that is simply not the case. The Indictment alleges a number of overt acts that Jefferson or his co-conspirators performed in the Eastern District of Virginia *before* the government's proactive investigation. *See* ¶¶ 73, 77, 182, 183, 185, 203. As for the numerous meetings and communications (both by telephone and by facsimile) that Jefferson had with CW in the Eastern District of Virginia, Jefferson participated in them willingly and without hesitation, as he anticipated that they would lead to millions of dollars from CW in return for his official acts. Ind. ¶¶ 93, 97, 110, 113, 116, 130, 131, and 137. Jefferson, in moving among various venues to commit his crimes, "assume[d] the risk" that he would become subject to prosecution in any one of those venues, including the Eastern District of Virginia. *United States v. Al-Talib*, 55 F.3d 923, 929 (4th Cir. 1995) (rejecting the notions of "manufactured venue" or "venue entrapment").

Although implicit in his motion, the defendant does not explicitly assert that he cannot receive a "fair trial in a fair tribunal" here in the Eastern District of Virginia. *Bracy v. Gramley,* 520 U.S. 899, 904-905 (1997). He does not dare make that assertion because he knows it is untrue.

Instead, he relies on census data to argue that the prosecution has used its "discretion to achieve a monochromatic and unjust result." *See* Defense Memorandum at 18. It is remarkable that months before the jury has even been empaneled, the defendant is predicting that the jurors will all be of the same race (presumably white) and biased against him.[5] Although the defendant does not appear to know this, the Court well knows that the statistics relating to the racial makeup of juries in the Eastern District of Virginia do not demonstrate, or even create the presumption, that they will be unable to afford the defendant a fair trial.

Defendant Jefferson's motion for transfer of venue based on equal protection grounds should be denied as his motion is devoid of any evidence demonstrating that the government's venue decision was animated by a discriminatory purpose or that the racial composition of the prospective jury pool would deprive the defendant of equal protection under the law.

B. The Interests of Justice Are Served by Trial in the Eastern District of Virginia

Fed. R. Crim. P. 21(b) permits transfer of a criminal trial "to another district for the convenience of the parties and witnesses and in the interest of justice." It is well within the discretion of the trial court to determine whether a transfer pursuant to Rule 21(b) is appropriate. *United States v. Heaps*, 39 F.3d 479, 482 (4th Cir. 1994). The Supreme Court has directed lower courts to consider the following ten factors in determining whether a transfer should be granted:

(1) the location of the defendant;
(2) the location of possible witnesses;
(3) the location of the events at issue;
(4) the location of documents and records;

[5] Defendant's prediction that the jury will be "monochromatic" is belied by his own statistics, which show a significant number of minorities (38.48%) residing in the Alexandria Division of the Eastern District of Virginia.

(5) the disruption of defendant's business;
(6) the expense to the parties;
(7) the location of counsel;
(8) the relative accessibility of place of trial;
(9) the docket condition of each district; and
(10) any other special elements which might affect the transfer.

See Platt v. Minnesota Mining & Manufacturing Co., 376 U.S. 240, 243-44 (1964). When applied here, the *Platt* factors "weigh convincingly against transfer given the close geographic proximity (approximately 10 miles) of the federal courthouses in Alexandria and the District of Columbia." *Smallwood*, 293 F. Supp. 2d at 640. As this Court recognized in *Smallwood*, the close proximity of both courthouses "effectively eliminates from the transfer calculus the usual considerations of convenience, accessibility, and expense." *Id.*

The location of the events at issue do not weigh in favor of transferring the case to the District of Columbia. Contrary to the defendant's claim, the "locus of criminal activity" was not in the District of Columbia. To be sure, the defendant performed acts in furtherance of the conspiracies and schemes alleged in the Indictment in the District of Columbia, but he also performed a multitude of acts in the Eastern District of Virginia, Kentucky, Louisiana, Maryland, Ghana, Nigeria, Equatorial Guinea, Cameroon, and Sao Tome and Principe. Furthermore, the vast majority of individuals and companies from whom defendant solicited or attempted to solicit bribes resided or were located outside the District of Columbia. As the Supreme Court recognized in *Platt*, "[t]he provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place." 376 U.S. at 245. Defendant Jefferson can hardly consider Northern Virginia a "remote place," given the number of times – before and during the government's proactive investigation – he willingly entered this District to further his unlawful schemes.

Furthermore, this District's docket conditions when compared to those of the District of Columbia weigh heavily in favor of trying Defendant Jefferson in the Eastern District of Virginia. According to the Judicial Caseload Profile prepared by the Administrative Office of the United States Courts, the median time from filing to disposition on a criminal felony charge in this District was 5.4 months in 2006, compared to 14.4 months in the District of Columbia in that same period. *See attached* U.S. District Court, Judicial Caseload Profiles for the Eastern District of Virginia and the District of Columbia, Gov. Exh. 1.

Lastly, there are no special elements in this case that weigh in favor of transferring this case to the District of Columbia. Defendant Jefferson's claims of prosecutorial abuse in seeking an Indictment in the Eastern District of Virginia are, as demonstrated above, absurd and unsubstantiated.

This case was properly brought in the United States District Court for the Eastern District of Virginia and should remain with this Honorable Court.

Conclusion

For the foregoing reasons, the defendant's motion to dismiss counts of the Indictment for lack of venue and to transfer the case to the District of Columbia should be denied.

Respectfully submitted,

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By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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